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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOHN BALLINGER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0605-CR-405
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Robert Altice, Judge  
Cause No. 49G02-0510-FB-178059

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**January 22, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

John Ballinger appeals his convictions for Class B felony burglary and Class D felony theft. We affirm.

## **Issue**

Ballinger raises one issue, which we restate as whether there is sufficient evidence to support his convictions.

## **Facts**

On October 13, 2005, Laura Ingersoll arrived at her apartment at approximately 1:00 p.m. After she got home, she heard banging noises coming from the apartment above hers. Ingersoll knew that the residents of that apartment, Lonnie and Tabitha Motley, worked during the day, and she became concerned. She opened the door to her apartment and saw a large man, who was later identified as Ballinger, with braids wearing an orange hat and jacket “coming really quickly” down the stairs. Tr. p. 29. Eventually Ingersoll looked at the upstairs apartment and noticed that the door was open, the doorjamb was splintered, and the apartment was wrecked. Ingersoll reported this incident to the police and recalled that, after she arrived home but before she heard the banging noises, she noticed a red van with a broken window parked outside her apartment and a smaller man sitting in the middle seat.

Shortly after receiving a radio dispatch regarding the incident, Officer Bruce Wright observed a red van with a driver matching Ballinger’s description. Officer Wright attempted to stop the vehicle; Ballinger jumped out of the van and fled into

nearby woods. Officer Wright eventually apprehended Ballinger. As they were returning to the van, Ballinger asked what he could do to “help himself out or make a deal.” Tr. p. 68. A yellow hat and orange jacket were found in the woods, and jewelry was strewn out of the van, including near the driver’s side of the van. Craig Dorsey was also apprehended, and jewelry was found in his pocket. Tabitha later identified the jewelry as hers.

Both men were charged with Class B felony burglary, Class D felony theft, and Class A misdemeanor resisting law enforcement. Dorsey apparently pled guilty to the burglary charge. Ballinger was tried by a jury and found guilty as charged. Ballinger now appeals the burglary and theft convictions.

### **Analysis**

When faced with a challenge to the sufficiency of evidence to support a conviction, we neither reweigh the evidence nor judge the credibility of the witnesses, and we respect the jury’s exclusive province to weigh conflicting evidence. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We must consider only the probative evidence and reasonable inferences supporting the verdict. Id. If the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt, we must affirm. Id.

Generally, circumstantial evidence alone may be sufficient to support a conviction. Jones v. State, 780 N.E.2d 373, 376 (Ind. 2002). Although one’s mere presence at the crime scene with the opportunity to commit a crime is not a sufficient basis on which to support a conviction, presence at the scene in connection with other circumstances

tending to show participation may be sufficient to sustain a conviction. Pratt v. State, 744 N.E.2d 434, 436 (Ind. 2001).

Ballinger argues that there is insufficient evidence that he participated in the burglary or the theft because Dorsey admitted to the crimes and testified that Ballinger was not a participant. Dorsey testified that Ballinger was coming out of another apartment as Dorsey was leaving the burglarized apartment, that Ballinger's girlfriend had just been in a car accident, and that Dorsey allowed Ballinger to drive the van to the scene of the Ballinger's girlfriend's accident. Ballinger essentially argues that he was in the wrong place at the wrong time and that his subsequent flight from Officer Wright was not motivated by his own guilt but by Dorsey's instruction.

This evidence, however, was before the jury. Ballinger is asking us to reweigh the evidence, and we decline his request. Tabitha, the victim, testified that a few months prior to the incident Ballinger had been to her apartment to deliver a pizza and that he was in the apartment for ten to fifteen minutes. Ingersoll testified that she saw Ballinger coming down the steps from the burglarized apartment in an orange hat and jacket and that she saw a red van parked near her apartment with another man inside the van. Officer Wright testified that he saw someone matching Ballinger's description wearing an orange jacket driving a red van similar to that described by Ingersoll. When Officer Wright attempted to stop the vehicle, Ballinger and Dorsey both fled from the van. An orange jacket and yellow hat were found in the woods where Ballinger was eventually apprehended and Tabitha's jewelry was found strewn out of the van, including on the driver's side. After he was apprehended, Ballinger asked Officer Wright what he could

do to “help himself out or make a deal.” Tr. p. 68. From this evidence a jury could have reasonably disregarded Dorsey’s testimony and concluded that Ballinger participated in the burglary and theft. There is sufficient evidence to support Ballinger’s convictions.

### **Conclusion**

There is sufficient evidence to support Ballinger’s convictions for burglary and theft. We affirm.

Affirmed.

BAILEY, J., and VAIDIK, J., concur.